

### REMARKS

The issues currently in the instant application are as follows:

- Claims 1-2, 12, and 16-17 are rejected under 35 U.S.C. § 102(b) as being anticipated by US 5,923,650 (Chen).
- Claims 3-4, 13-14, and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over US 5,923,650 (Chen) in view of US 2003/0081627 (Bao).
- Claims 5-6, 15, and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over US 5,923,650 (Chen) in view of US 2003/0124999 (Parssinen).
- Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over US 5,923,650 (Chen) in view of US 7,023,822 (Czaja).
- Claims 8-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over US 5,923,650 (Chen) in view of US 2003/0002464 (Rezaiifar).
- Claim 20 is rejected under 35 U.S.C. 103(a) as being unpatentable over US 5,923,650 (Chen) in view of US 2003/0124999 (Parssinen) and US 2003/0081627 (Bao).

Applicant traverses all the outstanding rejections and requests reconsideration and withdrawal thereof in light of the remarks contained herein.

#### 35 U.S.C. § 102(b) - Chen

Claims 1-2, 12, and 16-17 are rejected under 35 U.S.C. § 102(b) as being anticipated by US 5,923,650 (Chen). Column 17 line 64 to column 18 line 20 of Chen note that varying transmission channel conditions can affect communication between a remote station and a network. Chen proposes using a power control mechanism to combat changes in the channel condition. Chen fails to show or suggest “establishing a headroom value based on the communication channel variance condition” as recited in

independent claims 1, 12, and 16. The headroom value  $\alpha$  is constant in equation (4) of Chen. Thus, Chen's headroom value is not based on channel conditions much less "communication channel variance conditions." See original specification page 4 lines 10-18.

Claim 2 depends on claim 1, and claim 17 depends on claim 16, and thus these dependent claims are also not anticipated by Chen. Reconsideration and withdrawal of the rejection of claims 1-2, 12, and 16-17 under 35 U.S.C. § 102(b) as being anticipated by Chen is respectfully requested.

35 U.S.C. § 103(a) – Chen and Bao

Claims 3-4, 13-14, and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over US 5,923,650 (Chen) in view of US 2003/0081627 (Bao). Bao fails to overcome the deficiency of Chen in that Bao also does not show or suggest "establishing a headroom value based on the communication channel variance condition" as recited in independent claims 1, 12, and 16. Additionally, the data rate in Bao as described in paragraph [0031] is not determined based on a headroom value.

Thus, claims 3-4, 13-14, and 18 are not unpatentable over Chen and Bao. Reconsideration and withdrawal of the rejection of claims 3-4, 13-14, and 18 under 35 U.S.C. 103(a) as being unpatentable over Chen in view of Bao is respectfully requested.

35 U.S.C. § 103(a) – Chen and Parssinen

Claims 5-6, 15, and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over US 5,923,650 (Chen) in view of US 2003/0124999 (Parssinen). Parssinen, like Bao, fails to overcome the deficiency of Chen in that Parssinen also does not show or suggest "establishing a headroom value based on the communication channel variance condition" as recited in independent claims 1, 12, and 16. Additionally, the reduction of quality of service (QoS) proposed in Parssinen paragraph [0065] does not teach

modifying the headroom value. The Examiner makes a false conclusion when stating that headroom must be increased in order to reduce data rate. First, neither Chen nor Parssinen suggest modifying a headroom value. Second, QoS can be decreased by decreasing the transmit power, among other things. Parssinen would lead a person of ordinary skill to this power adjustment conclusion (rather than a headroom adjustment conclusion) because Parssinen is specifically discussing lower battery charge.

Thus, claims 5-6, 15, and 19 are not unpatentable over Chen and Parssinen. Reconsideration and withdrawal of the rejection of claims 5-6, 15, and 19 under 35 U.S.C. 103(a) as being unpatentable over Chen in view of Parssinen is respectfully requested.

35 U.S.C. § 103(a) – Chen and Czaja

Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over US 5,923,650 (Chen) in view of US 7,023,822 (Czaja). Czaja also fails to overcome the deficiency of Chen in that Czaja does not show or suggest “establishing a headroom value based on the communication channel variance condition” as recited in independent claims 1, 12, and 16.

Claim 7 depends indirectly upon claim 1 and thus is not unpatentable in view of Chen and Czaja. Reconsideration and withdrawal of the rejection of claim 7 under 35 U.S.C. 103(a) as being unpatentable over Chen in view of Czaja is respectfully requested.

35 U.S.C. § 103(a) – Chen and Rezaiifar

Claims 8-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over US 5,923,650 (Chen) in view of US 2003/0002464 (Rezaiifar). Rezaiifar also fails to overcome the deficiency of Chen in that Rezaiifar does not show or suggest “establishing a headroom value based on the communication channel variance condition” as recited in

independent claims 1, 12, and 16. Column 17 lines 54-63 of Chen merely note that power control must be performed on the reverse link. As stated previously, column 18 lines 9-20 of Chen propose a constant headroom value that is not based on a communication channel variance condition. Chen does not show or teach a base station “establishing a headroom value based on the communication channel variance condition” as recited in claim 7. Paragraphs [0095]-[0096] of Rezaiifar simply state that the maximum rate is a function of the current reverse rate added to the power headroom parameter divided by the energy-per-bit required.

Neither Chen nor Rezaiifar show or suggest “establishing a headroom value based on the communication channel variance condition” as recited in claims 1, 12, and 16 nor using a base station to establish the headroom value based on the communication channel variance condition as recited in claims 8-11. Reconsideration and withdrawal of the rejection of claims 8-11 under 35 U.S.C. 103(a) as being unpatentable over Chen in view of Rezaiifar is respectfully requested.

35 U.S.C. § 103(a) – Chen, Parssinen, and Bao

Claim 20 is rejected under 35 U.S.C. 103(a) as being unpatentable over US 5,923,650 (Chen) in view of US 2003/0124999 (Parssinen) and US 2003/0081627 (Bao). Claim 20 depends indirectly upon claim 16, and none of Chen, Parssinen, and Bao (in any combination) show or suggest “means for establishing a headroom value based on the communication channel variance condition” as recited in claim 16. Thus, claim 20 is not unpatentable over Chen, Parssinen, and Bao. Reconsideration and withdrawal of the rejection of claim 20 under 35 U.S.C. 103(a) as being unpatentable over Chen in view of Parssinen and Bao is respectfully requested.

S U M M A R Y

The application is in condition for allowance and a favorable response at an early date is earnestly solicited. Should the Examiner have any questions, comments, or suggestions, the Examiner is invited to contact Applicant's representative at the telephone number indicated below.

Please charge any fees associated herewith, including extension of time fees, to **Deposit Account 502117.**

Respectfully submitted,

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